Supreme Court, U. S.
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APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1396

MICHELIN TIRE CORPORATION,
Petitioner,

vs.

W. L. WAGES, Tax Commissioner, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

PETITION FOR CERTIORARI FILED MAY 7, 1975

CERTIORARI GRANTED JUNE 23, 1975

IN THE

SUPREME COURT OF THE UNITED STATES

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CHRONOLOGICAL LIST OF IMPORTANT DATES ON WHICH PLEADINGS WERE FILED, HEARINGS HELD AND ORDERS ENTERED

1973

Dec. 10 Plaintiff's Complaint filed in Superior Court of Gwinnett County, Georgia.

1974

Jan. 8 Defendants' Answer filed in Superior Court of Gwinnett County, Georgia.

Apr. 9 First Amendment to Plaintiff's Complaint filed in Superior Court of Gwinnett County, Georgia.

Apr. 9 Case tried, without a jury, in Superior Court of Gwinnett County, Georgia.

June 14 Opinion and judgment rendered by Superior Court of Gwinnett County, Georgia.

1975

Feb. 4 Opinion and judgment rendered by Supreme Court of Georgia.

Feb. 18 Michelin's Motion for Rehearing denied by Supreme Court of Georgia.

In the Superior Court of Gwinnett County
State of Georgia

Michelin Tire Corporation, Plaintiff, v. Robert L. Wilson, Administrator of the Board of Tax Assessors of Gwinnett County, Georgia; Jack Bramblett, Harold Prince and John Ratcliff, as Members of the Board of Tax Assessors of Gwinnett County, Georgia; and W. L. Wages, Tax Commissioner of Gwinnett County, Georgia, Defendants.	Civil Action. No. 15,509.

COMPLAINT

(Filed December 10, 1973)

The Complaint of Michelin Tire Corporation against Robert L. Wilson, Administrator of the Board of Tax Assessors of Gwinnett County, Georgia; Jack Bramblett, Harold Prince and John Ratcliff, as Members of the Board of Tax Assessors of Gwinnett County, Georgia; and W. L. Wages, Tax Commissioner of Gwinnett County, Georgia, respectfully shows:

1

Plaintiff is a corporation organized and existing under the laws of the State of New York with its principal place of busi-

ness in Lake Success, New York, and is authorized to and transacting business in Gwinnett County, Georgia.

2

The defendants herein named are: Robert L. Wilson, Administrator of the Board of Tax Assessors of Gwinnett County, Georgia (hereinafter defendant Wilson); Jack Bramblett, Harold Prince and John Ratcliff, as Members of the Board of Tax Assessors of Gwinnett County, Georgia (hereinafter defendant Assessors), all of whom may be served at the Tax Assessor's office in the Gwinnett County Courthouse in Lawrenceville, Georgia, and W. L. Wages, Tax Commissioner of Gwinnett County, Georgia (hereinafter defendant Commissioner), who may be served at his office in the Gwinnett County Courthouse in Lawrenceville, Georgia, and all of said defendants are subject to the jurisdiction of this Court.

3

Plaintiff is engaged in the business of importing into the United States automobile and truck tires and tubes manufactured outside of the United States and distributing such tires and tubes through franchised tire dealers.

4

As a part of such business, plaintiff operates a distribution warehouse located in Gwinnett County, Georgia. Tires and tubes imported by the plaintiff flow into such warehouse from the factories outside the United States at which such tires and tubes are manufactured and subsequently flow out from the Gwinnett County warehouse to destinations scattered throughout six (6) southeastern states.

5

On or about October 1, 1973, and based on NOD personal property tax returns made by defendant Wilson in plaintiff's name, defendant Commissioner billed plaintiff for additional Gwinnett County personal property taxes in the amount of $9,580.06 for 1972 and $11,208.96 for 1973. Copies of such bills are attached hereto as Exhibits J and K and expressly incorporated herein by reference.

6

All of the additional taxes claimed in the tax bills described in Paragraph 5 above were assessed on the inventory of imported tires and tubes owned by plaintiff and located in the plaintiff's warehouse in Gwinnett County on January 1, 1972 and January 1, 1973, respectively.

7

All of the tires and tubes located in the plaintiff's Gwinnett County warehouse on January 1, 1972 and January 1, 1973 were tires and tubes which plaintiff imported from outside the United States, and all of such imported tires and tubes were owned by plaintiff and were stored temporarily by plaintiff in such Gwinnett County warehouse pending distribution thereof to destinations scattered throughout six (6) southeastern states as hereinabove set forth.

8

All of the tires in the plaintiff's Gwinnett County warehouse on January 1, 1972 and on January 1, 1973 were tires which were imported in bulk, without packaging, and all of such tires were still in the exact same form and shape in which such tires were imported.

9

With the exception of certain passenger tubes which plaintiff had removed from the original shipping cartons (hereinafter referred to in Paragraph 35), all of the tubes located in plaintiff's Gwinnett County warehouse on January 1, 1972 and January 1, 1973 were still in the original packages in which such tubes were imported.

10

Except as otherwise shown in Paragraph 38 below, the additional taxes claimed in the bills referred to in Paragraph 5 are prohibited by the Import Clause (Article I, Section 10, Clause 2) of the Constitution of the United States, which provides in part:

> "No State shall, without the consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its Inspection Laws . . ."

11

By reason of these facts, and except as otherwise noted in Paragraphs 36 and 37 below, all of the tires and tubes located in the plaintiff's Gwinnett County warehouse on January 1, 1972 and January 1, 1973 were and are immune, under the Import Clause of the United States Constitution referred to in the preceding paragraph, from the imposition of personal property taxes by Gwinnett County, and the actions of the defendants set forth below are null and void and of no legal force and effect.

12

On or about March 28, 1972, plaintiff filed with the Personal Property Branch of the Board of Tax Assessors of Gwinnett County, Georgia, its Statement of Business Assets (Personal Property Tax Return) for the year 1972. A copy of said Statement is attached hereto as Exhibit A and expressly incorporated herein by reference.

13

As more fully shown in the copy of the Statement of Business Assets attached hereto as Exhibit A, plaintiff claimed that certain merchandise inventory located in its warehouse in Gwinnett County on January 1, 1972, having an approximate value of $744,961.00 was exempt from taxation because it was merchandise imported from a foreign country.

14

The merchandise inventory claimed by the plaintiff to be exempt consisted of the imported tires and tubes hereinabove described and plaintiff's claim of exemption was based upon the constitutional provision hereinabove set forth.

15

Plaintiff did not receive the notice required by Ga. Code §92-6911 (Acts 1937, pp. 517, 519) of any correction or change made by the defendant Assessors in the return filed by plaintiff and did not know that its return had been changed by the defendant Assessors until it received 1972 Gwinnett County Tax Bill No. 24559 from the defendant Commissioner.

16

As more fully shown on the copy of Gwinnett County Tax Bill No. 24559 attached hereto as Exhibit B and expressly incorporated herein by reference, the net taxable valuation placed upon plaintiff's property by the defendant Assessors was $308,-200.00 and included the sum of $297,980.00 as the assessed

value of the inventory of imported tires and tubes claimed to be exempt in plaintiff's original 1972 return, said amount representing 40% of the total value of the merchandise inventory of $744,961.00.

17

As a result of the defendant Assessors including the inventory of imported tires and tubes as a part of plaintiff's taxable property, the original Gwinnett County Tax Bill No. 24559 claimed total taxes due from plaintiff in the sum of $9,908.83.

18

Upon receipt of said original Gwinnett County Tax Bill No. 24559, counsel for plaintiff immediately contacted the defendant Commissioner concerning the taxability of the inventory of imported tires and tubes claimed to be exempt in plaintiff's original return, and the original Gwinnett County Tax Bill No. 24559 was subsequently amended to release from taxation the $297,980.00 assessment which the defendant Assessors included therein as the value of the inventory of imported tires and tubes. A copy of said amended tax bill is attached hereto as Exhibit C and expressly incorporated herein by reference.

19

On or about November 11, 1972, the defendant Commissioner forwarded to plaintiff a corrected statement of the taxes owed by plaintiff for the year 1972 under Gwinnett County Tax Bill No. 24559. A copy of said corrected statement is attached hereto as Exhibit D and expressly incorporated herein by reference.

20

Thereafter, plaintiff paid to the defendant Commissioner the sum of $328.58 as the total tax due for the year 1972, and Tax Bill No. 24559 was marked "paid" on the Tax Digest of Gwinnett County, Georgia.

21

On or about February 26, 1973, plaintiff filed with the Personal Property Branch of the Board of Tax Assessors of Gwinnett County, Georgia, its Statement of Business Assets (Personal Property Tax Return) for the year 1973. A copy of said Statement is attached hereto as Exhibit E and expressly incorporated herein by reference.

22

As more fully shown on the copy of the Statement of Business Assets attached hereto as Exhibit E, plaintiff claimed that certain merchandise inventory located in its warehouse on January 1, 1973, having an approximate value of $834,000.00 was exempt from taxation because it was merchandise imported from a foreign country.

23

The merchandise inventory claimed by the plaintiff to be exempt in its 1973 return consisted of a quantity of the imported tires and tubes hereinabove described, and plaintiff's claim of exemption was based upon the constitutional provision hereinabove set forth.

24

The 1973 Return filed by plaintiff as aforesaid was accepted by the defendant Assessors and the defendant Commissioner

subsequently issued Gwinnett County Tax Bill No. 27254 showing total taxes in the sum of $290.08 to be due from the plaintiff for the year 1973. A copy of said Tax Bill No. 27254 is attached hereto as Exhibit F and expressly incorporated herein by reference.

25

Plaintiff did not receive the notice required by Ga. Code § 92-6911(a), as amended (Acts 1937, pp. 517, 519; 1970, pp. 580, 581; 1971, p. 33; 1972, pp. 1114, 1118), of any corrections or changes made by the defendant Assessors in the return filed by the plaintiff for 1973 and had no knowledge that its 1973 return was being considered by the defendant Assessors until it received a letter dated August 24, 1973, from defendant Wilson requesting a meeting with representatives of plaintiff for the purpose of discussing the validity of the inventory exemption claimed by the plaintiff in its 1973 return. A copy of said letter is attached hereto as Exhibit G and expressly incorporated herein by reference.

26

Pursuant to the request contained in the letter attached hereto as Exhibit G, counsel for plaintiff met with Mr. Wilson on September 25, 1973, and were subsequently advised by Mr. Wilson on September 27, 1973 that Gwinnett County had decided to proceed with efforts to collect the tax it claimed to be due on plaintiff's inventory of imported tires and tubes for the year 1973, as well as the year 1972.

27

Pursuant to said decision and on September 27, 1973, defendant Wilson caused to be prepared and filed in the name of Michelin Tire Corporation NOD Tax Returns for the years

1972 and 1973, respectively. Copies of said NOD Returns are attached hereto as Exhibits H and I, respectively, and are expressly incorporated herein by reference.

28

As more fully shown by said NOD Returns, the inventory of imported tires and tubes claimed to be exempt from taxation in plaintiff's 1972 and 1973 returns was returned by defendant Wilson as taxable property, and its net taxable value assessed at $297,980.00 for 1972 and $333,600.00 for 1973.

29

The NOD returns hereinabove described were filed by the defendant Wilson without the knowledge or consent of plaintiff, and plaintiff has at no time authorized or ratified the filing of either of said returns.

30

Plaintiff has paid the $290.08 total tax shown to be due in the original 1973 Gwinnett County Tax Bill No. 27254 but has not paid the additional tax alleged to be due for the years 1972 and 1973 in the NOD Tax Bills attached hereto as Exhibits J and K.

31

By reason of these facts and with the exception of the particular items of merchandise inventory hereinafter admitted to be taxable in Paragraph 38, the actions of the defendant Assessors and the defendant Wilson as hereinabove alleged are null and void and of no legal force and effect, and said defendants, together with the defendant Commissioner, should be temporarily and permanently restrained and enjoined from assessing or attempting to collect the additional taxes alleged to be due from plaintiff on its merchandise inventory for the years 1972 and 1973.

32

By reason of the failure of the defendant Assessors to comply with the notice requirements of Ga. Code § 92-6911 (Acts 1937, pp. 517, 519) prior to changing plaintiff's 1972 return, and their failure to comply with the notice provisions of the same code section, as amended by Acts 1972, pp. 1114, 1118, before changing plaintiff's 1973 return, plaintiff has no adequate remedy at law and is entitled to an injunction to restrain the defendants from attempting to assess and collect the wholly illegal additional taxes claimed to be due from the plaintiff for the years 1972 and 1973.

33

Defendant Wilson has informed plaintiff's counsel that unless the additional taxes claimed to be due from the plaintiff for the years 1972 and 1973 are paid on or before November 20, 1973, defendants will cause a fi.fa. to be issued for the amount of such additional tax and will thereafter attempt to collect such additional tax by causing said fi.fa. to be levied upon plaintiff's warehouse facility located in Gwinnett County, Georgia.

34

The issuance and levy of a fi.fa. by the defendants as aforesaid will cause irreparable injury and damage to the plaintiff, and plaintiff is entitled to an injunction to restrain such conduct without awaiting the actual issuance and levy of a tax execution by the defendants.

35

In October, 1973, plaintiff learned that certain passenger tubes which it had claimed to be exempt in the returns attached hereto as Exhibits A and E, respectively, were not in fact exempt from local taxation because plaintiff had removed said tubes from the original shipping cartons.

36

On January 1, 1972, non-exempt passenger tubes having a value of $633.92 were owned by plaintiff and located in its warehouse in Gwinnett County, Georgia.

37

On January 1, 1973, non-exempt passenger tubes having a value of $664.22 were owned by plaintiff and located in its warehouse in Gwinnett County, Georgia.

38

Such non-exempt passenger tubes were and are taxable by Gwinnett County, Georgia, and total taxes in the sum of $8.03 for the year 1972 and the sum of $8.73 for the year 1973 are owed by plaintiff.

39

Prior to the filing of this Complaint, plaintiff has paid to defendant Commissioner the taxes admitted to be due for the years 1972 and 1973 on said non-exempt passenger tubes.

Wherefore, plaintiff prays:

(a) that summons issue requiring the defendants to appear and answer this Complaint as provided by law;

(b) that the defendants be temporarily restrained from attempting to assess and collect the additional taxes claimed to be due from plaintiff for the years 1972 and 1973; from issuing or causing to be issued against plaintiff any fi.fa. for the amount of such additional taxes; and from causing to be levied upon plaintiff's property any fi.fa. which might issue;

(c) that, after hearing, the defendants be permanently restrained and enjoined from attempting to assess and collect the

additional taxes claimed to be due from plaintiff for the years 1972 and 1973; from issuing or causing to be issued against the plaintiff any fi.fa. for the amount of such additional taxes; and from causing to be levied upon plaintiff's property any fi.fa. which might issue;

(d) that the Court declare the assessments and valuations placed on plaintiff's exempt merchandise inventory in the NOD Returns attached to the plaintiff's Complaint as Exhibits H and I, respectively, null and void and of no force and effect;

(e) that the Court declare the NOD Tax Bills attached to the plaintiff's Complaint as Exhibits J and K, respectively, null and void and of no force and effect, and relieve the plaintiff from the payment of the additional taxes sought to be collected by the defendant Commissioner; and

(f) that the plaintiff have such other and further relief as may be meet and proper in the premises.

JONES, BIRD & HOWELL

By: /s/ EARLE B. MAY, JR.

4th Floor Haas-Howell Building
Atlanta, Georgia 30303
522-2508

WEBB, FOWLER & TANNER

By: /s/ W. HOWARD FOWLER

234 Luckie Street, S. W.
Lawrenceville, Georgia 30245
963-3423

Attorneys for Plaintiff

State of Georgia
County of Gwinnett

Personally appeared before the undersigned officer, duly authorized to administer oaths in this state, Robert E. Stone who, after first being duly sworn, deposes and says on oath that he is Branch Operations Manager of Michelin Tire Corporation and as such is authorized to make this Affidavit, and that he has read the above and foregoing Complaint, and that the facts stated therein are true and correct.

/s/ ROBERT E. STONE

(Jurat and Exhibits A through K omitted in printing.)

In the Superior Court for the County of Gwinnett
State of Georgia

(Title omitted in printing)

ANSWER OF DEFENDANTS

(Filed January 8, 1974)

Now come the defendants in the above-styled cause and files this their answer to plaintiff's complaint as follows:

1

Defendants neither admit nor deny plaintiff's allegation as to where organized and where its principal place of business is located for want of sufficient information, but do admit that plaintiff is transacting business in Gwinnett County, Georgia.

2

Defendants admit Paragraph Two (2) of plaintiff's complaint.

3

Defendants neither admit nor deny the allegations contained in Paragraph Three (3) of plaintiff's complaint for want of sufficient information as to where the tires and tubes distributed by the plaintiff are manufactured.

4

Defendants neither admit nor deny the allegations of Paragraph Four (4) of plaintiff's complaint for want of sufficient information.

5

Defendants admit all of Paragraph Five (5) of plaintiff's complaint with the exception of the allegation that plaintiff was billed for additional personal property taxes in that said bills were for personal property tax owed by the plaintiff and did not represent bills for taxes in addition to that which the plaintiff was required by law to pay.

6

Defendants deny Paragraph Six (6) of plaintiff's complaint and in further answer aver that the taxes imposed were not additional taxes but taxes plaintiff was required by law to pay. Defendants further aver that the tires were stacked in racks in plaintiff's warehouse and were not in containers or original cartons so a determination could be made as to whether said goods were in fact import goods.

7

Defendants neither admit nor deny Paragraph Seven (7) of plaintiff's complaint for want of sufficient information and in further answer aver that an examination of the tires which were stacked in open racks and were not in containers did not reveal whether said tires were produced domestically within the Continental United States or were in fact goods imported from a foreign country.

8

Defendants deny Paragraph Eight (8) of plaintiff's complaint and in further answer aver that an examination of the tires did not reveal the method by which they were imported if said tires were in fact imported from a foreign country, and that said tires were not at the time of their inspection by the defendants or their agents packaged in any kind of container. However, defendants have been furnished information which lead them to believe that all or some of the tires were enclosed in seagoing containers which were their original package or container and that said seagoing containers were not opened until their arrival at the plaintiff's warehouse in Gwinnett County, at which time the original package or container was then opened, the tires were removed and placed on open racks in the warehouse. Defendants further aver that the tires were not imported in bulk but were in fact packaged in large seagoing containers.

9

Defendants neither admit nor deny Paragraph Nine (9) of plaintiff's complaint for want of sufficient information.

10

Defendants deny Paragraphs Ten (10) and Eleven (11) of plaintiff's complaint.

11

Defendants admit Paragraphs Twelve (12) and Thirteen (13) of plaintiff's complaint.

12

Defendants neither admit nor deny Paragraph Fourteen (14) of plaintiff's complaint for want of sufficient information.

13

Defendants deny Paragraph Fifteen (15) of plaintiff's complaint and in further answer aver that there was no change by the tax assessors in the return filed by the plaintiff and the assessment was based on the plaintiff's tax return. However, defendants did not agree with plaintiff's contention that a portion of its property would be exempt from State and County taxes.

14

Defendants admit Paragraphs Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-One (21), Twenty-Two (22), Twenty-Three (23), and Twenty-Four (24) of plaintiff's complaint.

15

Defendants deny Paragraph Twenty-Five (25) of plaintiff's complaint and in further answer aver that no notice was required due to the fact that the assessment made by the tax assessors for 1973 was based on the information contained in the return of the plaintiff. No changes or corrections in said return were made. However, defendants did, in fact, disallow, after review and investigation, the exemption as claimed by the plaintiff.

16

Defendants admit Paragraphs Twenty-Six (26), Twenty-Seven (27) and Twenty-Eight (28) of plaintiff's complaint.

17

Defendants deny Paragraph Twenty-Nine (29) of plaintiff's complaint and in further answer aver that the plaintiff was advised that the exemption had been disallowed and that Gwinnett County would proceed with steps necessary to collect the balance of the tax due for 1972 and 1973.

18

Defendants admit Paragraph Thirty (30) of plaintiff's complaint.

19

Defendants deny Paragraphs Thirty-One (31) and Thirty-Two (32) of plaintiff's complaint.

20

Defendants admit Paragraph Thirty-Three (33) of plaintiff's complaint.

21

Defendants deny Paragraph Thirty-Four (34) of plaintiff's complaint.

22

Defendants admit Paragraph Thirty-Five (35) of plaintiff's complaint.

23

Defendants neither admit nor deny Paragraphs Thirty-Six (36), Thirty-Seven (37) and Thirty-Eight (38) of plaintiff's complaint for want of sufficient information.

24

Defendants admit Paragraph Thirty-Nine (39) of plaintiff's complaint.

Wherefore, having fully answered plaintiff's complaint, defendants pray that the same be dismissed with costs on the plaintiff.

STARK, STARK & HENDERSON

By: /s/ HOMER M. STARK
Attorneys for Defendants

P. O. Box 8
Lawrenceville, Georgia 30245
963-3072

Georgia
Gwinnett County

Personally appeared before the undersigned attesting officer, duly authorized by law to administer oaths in the State of Georgia, Robert L. Wilson, who being duly sworn, deposes and says on oath that he is tax assessor of Gwinnett County, Georgia, and that the facts set forth in the within and foregoing answer are true and correct.

/s/ ROBERT L. WILSON

(Jurat and certificate of service omitted in printing.)

In the Superior Court of Gwinnett County
State of Georgia

(Title omitted in printing)

FIRST AMENDMENT TO PLAINTIFF'S COMPLAINT

(Filed April 9, 1974)

Now comes Michelin Tire Corporation and, pursuant to the provisions of *Ga. Code* § 81A-115, files this its first amendment to its original complaint as follows:

1

By inserting in said original complaint immediately prior to the prayers the following paragraphs numbered 40 through 44 inclusive, to-wit:

"40

On April 8, 1974, plaintiff learned for the first time that other tubes which it had claimed to be exempt in the returns attached hereto as Exhibits A and E, respectively, were not in fact exempt from local taxation because said tubes were domestic tubes which plaintiff had not imported into the United States.

41

On January 1, 1972, non-exempt domestic tubes having a value of $9,859.76 were owned by plaintiff and located in its warehouse in Gwinnett County, Georgia.

42

On January 1, 1973, non-exempt domestic tubes having a value of $6,392.36 were owned by plaintiff and located in its warehouse in Gwinnett County, Georgia.

43

Such non-exempt domestic tubes were and are taxable by Gwinnett County, Georgia and total taxes in the sum of $126.67 for the year 1972 and the sum of $86.02 for the year 1973 are estimated to be owed by plaintiff on said non-exempt domestic tubes.

44

Simultaneously with the filing of this amendment, plaintiff is paying to the defendant Commission the taxes estimated to be due for the years 1972 and 1973 on said non-exempt domestic tubes."

Wherefore, plaintiff prays that this its first amendment to its original complaint be ordered filed.

JONES, BIRD & HOWELL
By: /s/ EARLE B. MAY, JR.

4th Floor Haas-Howell Building
Atlanta, Georgia 30303
522-2508

WEBB, FOWLER & TANNER
By /s/ W. HOWARD FOWLER

234 Luckie Street, S. W.
Lawrenceville, Georgia 30245
963-3423

(Certificate of service omitted in printing)

In the Superior Court of Gwinnett County, Georgia

(Title Omitted in Printing)

Before:

The Honorable Charles C. Pittard
Judge of the Superior Court
Presiding Without a Jury

The Honorable Earl B. May, Jr.
Attorney at Law
Representing the Plaintiff

The Honorable Homer Stark
Attorney at Law, Lawrenceville, Georgia
Representing the Defendant

Reported by:

Richard A. Upton
Official Court Reporter for the Gwinnett
Judicial Circuit

TRANSCRIPT OF THE EVIDENCE

[Tr. 1*] Mr. May: My name is Earl May and Edward R. Cain of my firm in Atlanta and Mr. Fowler is associated with us in this case. First thing that I would like to do is tend an amendment—uh—and ask that it be filed in open court—uh—I served it on Mr. Stark this morning and it has been caused by a discovery which we made only yesterday, your Honor, that we did owe a few more—uh—dollars in taxes on some tubes that we do not contend were imported and we didn't realize it until yes-

---

* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

terday and we have tendered to Mr. Wilson, as the administrator, —uh—a check in payment of those taxes committed to be due in that amendment. I don't believe Mr. Stark has any objections.

Mr. Stark: No, sir.

The Court: Ordered filed.

Mr. May: Thank you, your honor. Now we have submitted a—uh—a trial brief to the court and I don't know whether the courts have had an opportunity to review that or—uh—whether you prefer for me to outline the case at this point or just how you wish us to proceed.

The Court: I have read your brief. I haven't had a chance to study it yet, sir. I suggest that you follow whatever procedure you wish to, Mr. May.

Mr. May: Alright, sir. Well, briefly—uh—this is a suit brought by Michelin Tire Corp.——

The Court: Well, the gist of your point is that any articles imported into this state are not taxable, so long as they remain in the original container in which **[Tr. 2]** they are imported into this country until they reach their final retailer, is that not so?

Mr. May: Well, that, that, yes, sir, that's part of it and there's a little bit more to it besides that, your honor. Basically——

The Court: You can go ahead and state it then.

Mr. May: Basically the, the complaint is that imported goods, imported by Michelin into Gwinnett County, are not subject to advalorem taxes by Gwinnett County—uh—due to the import cost of the federal constitution and we take the position that goods imported in packaging are not subject to taxation so long as they remain in their original package, but with respect to products that are imported in bulk without packaging such as automobile tires, which the evidence will show are imported without any packaging—uh—then those items so long as they are in the same form and shape in which they were imported

into this country and are still in the flow of distribution—uh—that they likewise are not subject to taxation. We have two different situations, Judge, is what I'm trying to say. Some of the imports do come in a package.

The Court: Well, I agree and I can make distinction of the court and I had forgotten that contention, as you say, yes, sir, the same contention is still until the imported goods reach the retailer. I think that they are not taxable to advarolem taxes. They are taxed by his inventory, but not in the wholesalers inventory or the distributors inventory.

[Tr. 3] Mr. May: Yes, sir, that is, is a part of our case and we, we call that still being in the fore of the import distribution, is what we call it. Your honor, at some point an import comes to rest and by illustration—if I got a set of Michelin tires on my automobile I can't go to the DeKalb County Tax Assessors and say you can't tax those because it's an import. Obviously, it's no longer an import at that point and time.

The Court: How about the man you bought them from? Can he raise the some?

Mr. May: I think it depends on what his relationship is, whether he's selling it retail or whether he is a distributor and the evidence in this case will show that at the Gwinnett County warehouse what Michelin does is—is import tires and tubes manufactured at factories outside the United States and distribute them through six southeastern states to franchise dealers and—uh—that is basically what—what the evidence will show in that respect. But if I might point out to you, your honor, there are very few facts here that are in dispute, the pleadings—uh—in the case or most of the allegations have been admitted and I don't know whether to take the court's time to read all these allegations and—and tell you what has and has not been admitted—uh—but I'll be glad to go over that if the court would like for me to. I think basically the only issue, and Mr. Stark can correct me if I'm wrong, is whether or not these

imported goods are in fact—uh—subject to advalorem taxes. **[Tr. 4]** Mr. Stark: Your honor, we——

The Court: As long as they remain in the—the hands of the——

Mr. May: ——of the importer——

The Court: ——importer.

Mr. May: Yes, sir, that's right.

Mr. Stark: Well, your honor, there's of course questions that we don't know the answer to—uh—when the tax assessors looked into the situation we found the tires, of course that were distributed in the warehouse as the other tires stacked on the shelf and we began to research the matter some and inquire of other counties as to what they were doing and I contacted the Attorney General to find out what advice they could give since it does involve state tax—uh—Clayton County has a similar warehouse—uh—Their attorney was somewhat interested in the situation because it involves taxes in Gwinnett and also Clayton County. Substantial matters, I think this would be somewhat about $10,000 depending on whether this exemption is allowed and researched the Georgia decision and there's no cases in Georgia relating to this point. So you have quite a sum of money involved relating to this—uh—exemption—uh—of course substantial amounts over a period of time. And so without any direct authority we took the position that finding the tires on the shelves as we did, that apparently ready for sale that they were subject to county taxes.

The Court: He'll be able to answer your question, I presume. But does it make any difference to—you say your tires are shipped in bulk——

[Tr. 5] Mr. May: We have evidence that proves that, Your Honor.

The Court: When they are shipped in bulk, are they segregated in the warehouse after they reach Michelin place in Gwinnett County or, are they intermingled with the other stock or merchandise of tires that he already has, or——

Mr. May: Well, the evidence will show, Your Honor.

The Court: Then we come to the point that they're still within the process of being imported.

Mr. May: Well, with respect to tires, the evidence will show that—that—or, and never have been any tires except imported tires in the warehouse—uh—and they are removed from the vehicle in which they are transported to the warehouse and segregated by sizes and stacked until they are distributed to the six southeastern states.

The Court: Why don't you go ahead and make your record on it?

Mr. May: O.K.—All right, sir. I can put up the evidence.

Mr. Stark: Well, Your Honor, we're not—don't want to delay because we've agreed to on them introducing affidavits of whatever, so we can get a complete record because really they're trying to establish, I think, basically their method of operation, and we're not that well acquainted. Uh—so I told him that, but we would if he brought in affidavits we would not resist the introduction of the affidavits. The other matter in order that—uh—a complete record would be built in the case, cause I'm sure that we will probably have to appeal at some time because we need direction in this particular matter—**[Tr. 6]** uh—due to the fact we can't seem to receive it. Otherwise, we probably have to go and get it from the courts to tell us how to handle, because we have now, I believe—what four or five importers operating in the country, some televisions—uh, Panasonic—uh, two or three other Japanese outfits—so its getting to be a mass—substantial amount of tax involved and we need some direction in how to handle this matter and that's really why we brought the matter to a head this way, to find out really where we stand.

Mr. May: That's our intention also, Your Honor, and this—uh—we've agreed with, can be a final hearing and the court can issue a final order so that either side might appeal and get a final ruling if we desire and we do have an affidavit, one affidavit which I have—uh—served on Mr. Stark in which I would also like to read into the record and tender into court. This is the affidavit of Mr. Roland A. LeCroy personally appeared before the undersigned officer Roland A. LeCroy who after being first duly sworn deposes and says on oath as follows: 1. This affidavit is made to be submitted to Superior Court of Gwinnett County, Georgia as evidence on behalf of the Plaintiff in the above styled action and all facts herein stated are within the personal knowledge of the affiant. 2. At all times material herein affiant has been and is now the administrative manager of Michelin Tire Corp. and as such has personal knowledge of the facts herein and after stated. 3. Michelin Tire Corp. is a corporation **[Tr. 7]** organized and existing under the laws of the State of New York with its principal place of business and late success, New York and is authorized to and transacting business in Gwinnett County, Georgia at 2169 Interstate 85, Norcross, Georgia. 4. Michelin Tire Corp. is engaged in the business of importing into the United States automobile and truck tires and tubes manufactured outside the United States and distributing such tires and tubes through franchise tire dealers as a part of such business. Michelin operates a distribution warehouse located in Gwinnett County, Georgia and all tires and tubes which flow into such warehouse are imported by Michelin from factories outside the United States in which such tires and tubes are manufactured and subsequently flow out from the Gwinnett County warehouse to destinations scattered throughout six southeastern states. Michelin is required to pay to the United States of America a 4% import duty on all of the tires and tubes which it imports from factories outside the United States and said 4% import duty was paid by Michelin on all of the imported tires and tubes located in the Gwinnett County warehouse on January 1, 1972 and

January 1, 1973 which, your honor, happened to be the two years that we are concerned with in this case. 6. Approximately 75% of the imported tires and tubes located in the Gwinnett County warehouse on January 1, 1972 and January 1, 1973 were transported from the factories outside the United States at which the same were manufactured to the Gwinnett County warehouse in **[Tr. 8]** vehicles commonly referred to as Sea Van trailers and the remaining 25% were transported in over-the-road trailers. Michelin Tire Corp. does not own or lease any of the Sea Van trailers or any of the over-the-road trailers in which that imported tires and tubes are transported and all of such trailers are owned by the shipping companies who transport the imported tires and tubes. As of January 1, 1972 and January 1, 1973 respectfully none of the imported tires and tubes located in the Gwinnett County warehouse were pledged or hypothecated by Michelin as security for any loan. 9. Michelin Tire Corp. did not receive any notice of any correction or change made by the Tax Assessors of Gwinnett County, Georgia in the 1972 personal property tax return filed by Michelin and did not know that its return had been changed by the assessors until it received 1972 Gwinnett County tax bill number 24559 from the Tax Commissioner of Gwinnett County, Georgia. Michelin Tire Corp. did not receive any notice of any correction change made by the Tax Assessors of Gwinnett County, Georgia in the 1973 personal property tax return filed by Michelin and had no knowledge that any correction or change in its 1973 return was being considered by the Tax Assessors of Gwinnett County, Georgia until it received a letter dated August 24, 1973 from Mr. Robert L. Wilson, Administrator of the Board of Tax Assessors, Gwinnett County, Georgia requesting a meeting with representatives of Michelin for the purpose of discussing the velleity of the inventory **[Tr. 9]** exemption claimed by Michelin in its 1973 return. 11. The NOD returns attached to the Plaintiff's complaint as Exhibits H and I respectively were filed by Mr. Robert L. Wilson, Administrator of the Board of Tax Assessors of Gwinnett County, Georgia

without the knowledge or consent of Michelin Tire Corp. and Michelin has at no time authorized or ratified the filing of either of said returns. 12. As of January 1, 1972, passenger tubes which has been removed from the original cartons and having a value of $633.92 were owned by Michelin Tire Corp. and located in its warehouse in Gwinnett County, Georgia. On January 1, 1973, passenger tubes which had been removed from the original cartons and having a value of $664.22 were owned by Michelin Tire Corp. and located in its warehouse in Gwinnett County, Georgia this 20th day of March, 1974. Signed Roland A. LeCroy, and sworn to before Ellen Sue Baracove, New York Notary Public with the seal of the state, Your Honor. I offer this affidavit in evidence.

Mr. Stark: We have no objections, Your Honor.

Mr. May: Hand it up to Your Honor.

The Court: This Plaintiff marked exhibit.

Mr. May: Excuse me, I'm sorry, that would be Plaintiff No. 1. Your Honor, we would like to call at this time Mr. Roland E. Stone. Mr. Stone, would you come around please? Raise your right hand please, swear the testimony you are about to give in the hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Roland E. Stone: Yes.

ROBERT E. STONE

[Tr. 10] Q. Would you please state your name and present address? A. My name is Robert E. Stone and I live at 4196 Hambrick Way, Stone Mountain, Georgia.

Q. And by whom are you presently employed, Mr. Stone? A. Michelin Tire Corp.

Q. And in what capacity? A. Trans Operation Manager of the Norcross facility.

Q. Alright sir, how long have you been employed in the capacity? A. In that capacity almost four years.

Q. Alright, sir. So you were employed in that capacity on January 1, 1972 and January 1, 1973. A. Yes, sir.

Q. Alright sir. In what business is Michelin Tire Corp. presently engaged, Mr. Stone? A. Michelin Tire is primarily engaged in the importing of tires and tubes, uh—and distributing them to franchise dealers throughout a six state area in the southeast.

Q. Alright sir, and was Michelin Tire Corp. engaged in business in Gwinnett County, Georgia on the two dates that we have mentioned, January 1, 1972 and January 1, 1973. A. Yes, sir. They were.

Q. Please describe the nature of the business which was being conducted by Michelin in Gwinnett County on those two dates. A. Michelin was engaged in the distribution of these imported tires and tubes, uh—to the various franchise dealers within the six state area.

[Tr. 11] Q. Alright, sir, as of January 1, 72 and 73, would you tell the court whether or not all of the tires and tubes located in the Gwinnett County warehouse were tires and tubes which had been imported from outside the United States? A. Uh—yes, sir, with the exception of a small amount of domestic tubes.

Q. With the exception of a small amount of domestic tubes, now let stop a minute, do I understand that as of January 1, 1972 and 73 all of the tires located in the warehouse had been imported by Michelin from a foreign country with the exception of certain domestic tubes? A. Yes.

Q. Now with respect to these domestic tubes, uh—Mr. Stone, when did you first remember the existence of these domestic

tubes? A. Yesterday about 10:30 when you and I were discussing the case.

Q. Alright sir and would you tell the judge how those domestic tubes come to be in the inventory on those two dates? A. Back in—uh—1971 at some point we were experiencing a severe shortage of various size tubes of our Michelin tubes, so it was a decision of upper management in Michelin Tire Corp. to purchase some domestically made tubes to supply to our franchise dealers upon request so that we might be able to supply them with their needs.

Q. Alright sir. In those, uh—the domestic tubes that you remembered yesterday might have been in inventory and upon checking you did find—— A. Yes——

Q. ——that there was some?
[Tr. 12] Mr. May: And, uh—we'll go into that a little further later, your honor, that's about these domestic tubes.

Q. Now getting back to the tires and tubes that were in inventory on January 1, 72 and 73, what was the purpose of having those imported tires and tubes in the Gwinnett County warehouse on those dates? A. The sole purpose of having these imported tires there were to, uh—weighing distribution to the dealers.

Q. Alright sir. Now how were the imported tires and tubes that were located in the warehouse on those two dates transported from the factory that which they were manufactured outside the United States? How were they transported from those factories to the Gwinnett County warehouse? A. Basically two methods are used to import our product, one is a Sea Van trailer, that is loaded at the factory and then is finally transported to our warehouse and the other is by common carrier or over-the-road trailer. These are basically two methods that are used.

Q. I see. In what form are these tires imported? A. Well, in all cases they're in a what you would consider a bulk state, they're loaded into the trailers, uh—in a bulk fashion.

Q. Do you have any packages on them, or, the tires, are they wrapped packages in any—— A. Each tire is loose, each tire is an individual, uh—item.

Q. By the way, does each tire have a separate serial number which distinguishes it from any other tire? A. Yes, sir.
[Tr. 13] Q. Alright, and so you say that these arrive in bulk without any packaging at the time they arrive at your warehouse? A. Yes, sir.

Q. Did you at my request take some photographs showing the form in which the imported tires are received at the Gwinnett County warehouse? A. Yes, I did.

Q. Approximately when did you take these photographs? A. Approximately two or three months ago.

Mr. May: Now—ask the reporter to mark this as P-2, please.

Q. I hand you a Exhibit marked P-2 for identification, Mr. Stone and ask you if these are the photographs which you took at my request? A. Yes, they are.

Q. Are these photographs a true and accurate representation of the form in which the imported tires are received at the Gwinnett County warehouse? A. Yes.

Mr. May: Your Honor, please, I would like to offer these photographs in evidence.

The Court: Any objections, Mr. Stark?

Mr. Stark: No, no objections.

Q. Would you take this, Mr. Stone, and, and simply point out to the judge anything particular you would like to as to the manner in which the tires are received? You might tell him what, what is this vehicle that there in there. Is that a Sea Van

trailer or regular trailer? A. That is simply a Sea Van trailer, uh—in which we receive approx——

[Tr. 14] Mr. Stark: What is a Sea Van trailer?

Witness: It's nothing more than a trailer that the wheels can be detached from in order to stack more easily on a ship.

The Court: Were these tires loaded and brought?

Witness: Yes, sir.

The Court: Shipped on a ship?

Witness: Yes, sir.

The Court: I understand it, thank you.

Witness: Yes, Your honor.

The Court: Nothing like package freight in this area?

Witness: I'm not familiar with it.

The Court: Trailers on a freight car with wheels on it, I believe?

Mr. May: Since the judge has ask that question, Mr. Stone, would you, would you tell us as best you understand it the procedure that is used in, from lets say from the time the tires are loaded in the vehicle in which they are transported until they arrive at your warehouse in Gwinnett County?

Witness: Well, the tires are simply loaded as in the state that you can see in the photographs, uh—at the factory and are then transported to the loading docks at some European or foreign court and at that point a crane lifts the trailer up and the wheels are detached and are placed on a board a sea going vessel and then are transported across the water and the opposite is, is a—takes place at the local, the domestic port and the trailer is placed back on wheels and a piece of our equipment is hooked up to it and is transported to our dock.

Q. Alright sir. You mean your dock at the warehouse? A. To Michelin Tire Corp.

[Tr. 15] Q. In Gwinnett County, you're talking about your receiving dock—— A. Yes.

Q. ——as opposed to a shipping situation, I mean a boat dock? A. Yes.

Q. Alright, your Honor, uh—since you asked the question I'll go ahead into this line of evidence right now. Mr. Stone, did you also at my request take a series of photographs showing various Sea Van trailers in which you received shipment of tires at the Gwinnett County warehouse and did you also take a series of photographs showing a various common carrier trailers that you received tires in—shipment of tires at the Gwinnett County warehouse? A. Yes, sir.

Q. Approximately when did you take those photographs? A. At the same time the others were taken.

Mr. May: Mr. Stone, Mr. Stark said he had no objections your Honor, so I'll just have these marked as P-3 and P-4.

Q. Mr. Stone, I hand you what has been admitted in evidence as Plaintiff Exhibit No. 3 and ask if you will to explain to Judge Pittard what those photographs represent and to all of us for that matter. A. Your Honor, these are simply Sea Van trailers where they have been pulled up to our dock, our warehouse dock, and have been unloaded. They are still attached to what in the freight business are called power equipment. They are tractor trailer units and which join various companies, various trailer companies.

[Tr. 16] Q. And this is what on P-4? A. In comparison these are simply ordinary trailers that are, uh—used within the United States over the road.

The Court: Where would these trailers be loaded, ordinary trailers?

Witness: I'm not sure I understand your question.

Mr. May: Where the tires, where would——

The Court: ——the tires, where would the tires come from at the trailer?

A. From our Canadian factories.

The Court: Still imported, I might say.

Mr. May: Yes, sir, yes, sir.

Q. So that in reality, Mr. Stone, is there any real difference in a Sea Van trailer and an ordinary trailer? A. No, sir.

Q. Objective ask that the only minor difference I take it is the Sea Van, the wheels are removable so that they can be stacked on board a ship and that can be done with an ordinary over-the-road trailer. Is that basically the only difference? A. Yes, sir.

Q. Alright, sir. Now are the imported tires and tubes, I may have asked you this before, that are received at, excuse me. Are the imported tires that are received at the Gwinnett County warehouse, uh—fastened together in any way? Do they have metal binders, or are they on pallets, or, are they just like shown in that photograph, Plaintiff Exhibit No. 2? A. All tires whether they be trucked, passenger or commercial tires are received in unifederal units, not tied or strapped together in any fashion.

[Tr. 17] Q. Alright, sir. As of January 1, 72 and January 1, 73, what if anything had been done to the imported tires located in Gwinnett County warehouse in the way of modifying them or changing them in any way from the shape and form in which they were imported into this country? A. Absolutely nothing.

Q. Alright, sir. Well, obviously they, of course, they had been removed from the trailer? A. It was stacked, uh—they were removed from the trailers and were stacked on pallets

segregated by size, placed in the warehouse awaiting distribution onto the franchise dealers.

Q. But other than that nothing had been done and the tire was exactly the same form and shape in which it was imported into the country. Is that correct? A. Yes.

Q. Alright, sir. In what form are the imported tubes when they arrive at the Gwinnett County warehouse, Mr. Stone? A. The tubes are in a corrugated outer master carton and within each master carton the individual tubes are, or each tube is individually packed in a smaller carton and the number of tubes within a carton is determined by its size.

Q. You see if I understand, there is an, there's, there is what we could call a shipping carton, an outside cardboard container. A. Yes, this is a heavy corrugated carton that is used, uh—what we would call in the industry, a master carton or a shipping carton, uh—it's of a heavy corrugated nature and within each of those, uh—you have a smaller carton with one tube in each carton.

[Tr. 18] Q. I see. Alright, sir. Now, uh—as of January 1, 72 and January 1, 73, what if anything has been done to the imported tube located in the Gwinnett County warehouse, in the way of modifing or changing them in anyway from the shape or form in which they are originally imported into this country. A. Well, nothing has been done to alter their shape or form. There have, there were some that had been removed from the master carton and had then also removed from the full case area and brought into a shelter area where they were placed on shelves for resale in smaller quantities.

Q. You say some had been removed from what was that term you used, full case? A. Full case areas where we keep full cases of all these.

Q. Is this a section of your warehouse, yes, that you refer to as the full case area? A. Yes.

Q. And is there another section of your warehouse that you refer to as the shelf area? A. Yes, sir.

Q. And then, am I, do I understand that when you open one of these cartons in which the imported tubes originally arrive at your warehouse . . . Strike that please, sir. Before you open one, where are the cartons kept in the warehouse, the cartons of tubes? A. Well, they're kept in the warehouse segregated by size in what we would call full case area and when it does become necessary to open a case, then the case is brought forward into the shelf area and the tubes are removed from the outer shipping carton and placed on a shelf, uh—in the warehouse.

Q. In the little boxes each individual tube is in a little box which you take the little box out of the big box **[Tr. 19]** and put it up on a shelf. Is that basically what you're saying when you open a carton? A. That's correct.

Q. I see, but except for those, uh—the tubes are still in the same shape and form in which you received them in the same package in which you received them until such time as you break the carton. Is that correct? A. That's correct.

Q. Alright, sir. Now, uh—as of January 1, 72 and 73, were there any tubes in the Gwinnett County warehouse which had been removed from the original cartons? A. Yes.

Q. Do you recall what the fair market value of those tubes were on each of those two dates? A. Uh, yes, I believe I supplied that figure, it was, both dates, were somewhere around $600, some odd dollars.

Q. Alright, sir. Had the advalorem taxes due on those passenger tubes that had been removed from the cartons been paid to Gwinnett County? A. Yes.

Q. Alright, Mr. Stone I already ask you about the discovery on yesterday of these domestic tubes. Let me ask you this, in

what form are these domestic tubes when they arrive at Gwinnett County?

The Court: Let me interrupt you, just a minute——

Mr. May: Yes, sir.

The Court: ——before you go on with that. Are you saying that $600 and some odd dollars worth of tubes that you pay taxes on would be tubes that you had broken your master cart, carton taking the tubes into individual boxes **[Tr. 20]** from the master carton, in so, in so many ways place them into stock for sale, set up on shelves?

Witness: Yes, your Honor.

The Court: Do you consider those are subject to advalorem taxes?

Mr. May: Yes, sir. We concede that.

The Court: When one's——

Mr. May: Where the original package, if it comes in a package, your Honor, if the original package has been broken, uh—and we conceded the tax ability of that and have in fact paid the tax on those.

Q. I was talking about these domestic tubes, uh—just so the record will be clear how do you get those when you have to buy those in that one instance, uh—how did those come to your warehouse, in what form? A. Well, as far as I know all domestic manufacturers use basically the same method of packaging as we received on this one time that these were purchased and they come in a, in a master carton or corrugated carton. Within that carton are tubes rolled up and loose, they are not within an inner shipping or in a smaller carton. These were received in that fashion.

Q. Alright, sir, and what if anything is done with those tubes when the shipping carton is broken? A. In those few

instances where these required being broken, uh—of course the same thing would have been done with those as were done with the Michelin tubes, they were pulled out from the full case arch of the domestic tubes and brought forward into a similar shelf area as we have our Michelin tubes.

Q. Are the domestic tubes at anytime ever mixed with, or **[Tr. 21]** comingled with the imported tubes? A. No, sir.

Q. And am I correct at all times the imported tubes are kept separate and apart from the domestic tubes? A. Yes.

Q. Alright——

Mr. Stark: Your Honor, I am of course, I don't know, going through this, I believe we are just telling the witness what to state. I, I think when he says comingling we are using these terms that relate to what we are getting down to the basic facts of the case here. I think if the witness, you know I don't object, but when he says do you comingle and he's telling him what to say about it, I think we're getting a little bit far out, when he says that he's got domestic tubes in a box here and, and imported tubes here in the same room. That's a legal term as to where they've been comingled and I don't much believe that this witness is qualified to testify on that.

Mr. May: Your Honor, I think some of what Mr. Stark said is a valid objection and I apologize for leading the witness but this is not a jury and he has got the right to cross-examine.

Mr. Stark: I just, uh—think we are getting into legal terminology. As long as he stays away from legal terms I have no objections.

Q. Let me ask you that Mr. Stone, do these domestic tubes have any markings on the carton, or on the tube? A. Well, the, the, hu—domestic tubes are, the cartons are **[Tr. 22]** marked with the manufacturer's name and size description and then

each tube itself is stamped with the, uh—manufacturer's name and also some description.

Q. And what if anything does that fact enable you to do in terms of distinguishing between the Michelin tube and a domestic tube? And when I say a Michelin, I mean an imported tube. A. Well, its no chance that we could ever get any of them mixed up, they're quite obvious, too.

The manufacturers of Michelin tire and the manufacturers of competitive tire tube and manufacturers of competitive tube.

Q. Alright, sir. What was the fair market value of the domestic tube in inventory on January 1, 72 and 73? A. As best of my recollection, I believe 1972 was somewhere close to $10,000 and 1973 was say a thousand bucks.

Mr. May: Now I would state in my place that on—to the amendment yesterday afternoon, I spoke with Mr. Wilson and calculated the tax due on those values and I have this morning in open court given him a check payable to the Tax Commissioner of the County in payment of those additional taxes which we admit to be due. May I have just a moment, your Honor?

Q. Just a couple of more questions, Mr. Stone, with respect to the domestic tubes and the imported tubes. State whether or not that ever at anytime those tubes were put in a—in the same pile. A. No, sir. There's, there is no way you can put them in a same pile. I'm not too clear of your question, uh—you have Michelin tubes in one spot and you have whatever the competitive tubes was in another spot.

[Tr. 23] Q. Might have been Goodyear or something like that? A. Yes, sir. Perelli, Bridgestone, I believe there were about three different manufacturers purchased at this one point in our history when we were short of tubes and uh, at no time were they kept at the, in the same proximity because, uh—they just weren't.

Mr. May: Keep with it, Mr. Stark.

Questions by Homer Stark

Q. Mr. Stone, are you familiar with the general corporate set up of Michelin Tire as to how it is set up to, uh—where the tires are made, who makes the tires and the overall organization of the Michelin Corp.? A. Uh—Vaguely, and I would have to answer that I might in those terms, uh——

Mr. Stark: o.k.

Witness: ——I generally——

Q. Well let me ask you some general questions about the operation. Who manufactures the tires, uh—in Nova Scotia? What is the name of the company that actually manufactures the tires in Nova Scotia? A. Michelin Tires Limited, I believe would be.

Q. Is that a, uh—French, uh—Corp. or is that the headquarters of that particular corporation in France, or is it in Canada, do you know? A. I can't say with complete authority. I would only be assuming at this point to answer that question.

Q. Is it manufactured in the Michelin Factory or are these tires made by somebody for Michelin, or are they manufactured in the Michelin plant? A. No, sir. I believe that I can honestly answer that all **[Tr. 24]** Michelin products are manufactured by Michelin Tire Corp., uh—whatever the apparent organization may be called.

Q. Now what about the ones in France? I believe this is the main headquarters of the Michelin Tire Corp. What is the name of the company that manufactures the tires there? A. Michelin Tire and I'm not sure whether its corporation, limited, whatever, it is Michelin and——

Q. Well, did the corporation the, uh—organization, uh—start in France? Was that the original headquarters of the making of these tires. A. Yes, sir.

Q. Uh—Now in the petition it says that the Plaintiffs corporated existing under the law of the state of New York. Now is Michelin Tire Corp., is that the headquarters of Michelin Tire Corp. itself? A. Uh—Of Michelin Tire Corp., U.S.A., yes.

Q. So that is a, uh—, you have one corporation, Michelin Tire Limited, then presumably that manufactures these tires in Nova Scotia and France. Do you have any other place where they are manufactured? A. Uh—Yes, sir.

Q. Yes, sir. Now which one of the companies actually import the tires into the United States? Is it Michelin Tire Co., New York, or is it imported by, uh—Michelin Tire, Limited, the company that manufactures the product. A. I can't answer that. I do not know.

Q. Now you are employed by what company, what is your employer designated as? **[Tr. 25]** A. I am employed by Michelin Tire Corp.

Q. Is that of—that of New York? Is that your apparent headquarters there? A. Yes.

Q. And so you are a employee of the domestic corporation and I believe it states in the petition that this corporation is transacting business in Georgia and authorized to do so. I presume that this New York Corporation is registered to do business within the State of Georgia. Is that correct? A. Yes.

Q. And this is the company he works for? A. Yes.

Q. But it's not the company that actually manufactures the, the product itself? A. May I answer that in another way than yes?

Mr. Stark: Oh yes, yes, sure you can explain.

A. You are getting me involved in a technical aspect of our corporation, our company that I honestly can not give you any information on. I do not have the information, I do not know. I've never looked into this aspect of the corporation of the com-

pany. When you bring in the limited aspects of either, simply terminologies that is used in various companies. There is only one Michelin Tire, whatever. It is a privately owned company of its parent office in France, of which all other countries are directly connected, so if you mind.

Q. So it may be that this Michelin Tire Corp. is a subsidiary? Would this be the way you would normally **[Tr. 26]** describe it, of the parent company in France? A. I honestly can not answer that because I don't know the legal aspects. You are getting me involved in something I'm just not——

Q. Alright, who actually brings the tires into the company who, country, who pays the import duty on the tire when they reach the port of origin, uh—I mean the port of entry in the United States, or at the point of entry? Do you know that? A. Well, it is my understanding that Michelin Tire Corp. is responsible for, through a broker within each port of paying the custom duty. Now who is the broker or importer that actually brings the tires into this country.

Q. Do you know what company that you receive these tires from? What company, do you have an import country that you actually, uh—submits the tires to the proper authority, as far as the paper work is concerned and gets the import paid, or how is this handled? A. We use a broker simply for the documentation of the import, uh—various import duties, various import requirements, and this is Intermaritine Forwarding Corp. of New York City.

Q. Are these an import, export company that handles this part for you? A. Uh—not an import company as such. They are simply, uh—hired by us to perform the documentation necessary for the importing of the tires into this country.

Q. Well, do they hold a status as an importer, or—— **[Tr. 27]** A. I cannot answer that.

Q. You don't know whether they are in fact a, an importer or exporter? A. I, I can only assume, uh—and I couldn't state

positively, but it is my understanding that we are also the importer. We only use this Intermaritime Forwarding Agent, uh—in order to simplify the methods of bringing our goods into this country. Its most——

Q. Is that because they're licensed to import, export people that you use them as a matter of convenience to bring your product into the country through regular importing channels? A. There again, I can not answer that.

Q. O.K. Now once the tires are shipped from the factories, uh—I believe you state that they are in what is known as a sea-going container. Would you state for the record what a sea-going container is? How its designed, and built and its size? A. Well, the Sea Van trailers are simply, us—approximately, the same size as a, uh—ordinary trailer.

Q. What would be the length, the height and width? A. Approximately, I'm not exactly——

Q. ——but just give me an approximation for the record. A. 40 feet in length, uh—with wheels attached 12′ 6″. I would guess them to be actually the height from the floor of the trailer to the top of the roof. It would 9—8½ feet and about 8 feet wide.

Q. O.K. Now, uh—the tires are at what point placed in **[Tr. 28]** this sea-going van or container? At what point are they actually put in, physically put into the container? A. It is my understanding that they are placed in at our factories.

Q. So they are placed in loose. I believe you now testified that they, they're not bound together. They are loosely stacked in, within the van or container. A. Yes.

Q. And then is the, what is the door closed and sealed, or what is the method of securing the trailer? Do you have, uh—sealed locks or a method of sealing them at the point, uh—and then unsealing them at another point, or what is your method on that? A. The door are closed, and the seal is attached, and

the seal is normally not broken until it arrives at our warehouse, or at the, portman of customs breaks it, uh—to look into it and then reseals it at that point.

Q. Well, when they arrive at your warehouse, is the van sealed at that time? A. Yes.

Q. O.K. Do ya'll break the seal and open up the sea-going container at that point?

Witness: Would you repeat the question?

Q. Well, do you break the seal on the outside and then open the van, unlock the van, and then open it up when it reaches your dock at your warehouse? A. Yes.

Q. In Gwinnett County? A. Yes.

Q. O.K. So, basically the van is, is still with tires in **[Tr. 29]** France. Say its put in the ship, its transported by ship, say to New York which would be a port of entry. At that point its taken off the ship, placed on the back of a truck or trailer with a bed, right? With wheels on it? A. Well, uh—yes, except that it would not be a, a truck, uh, uh—May I describe this?

Mr. Stark: Yes.

A. ——is a question of this, the, uh—Sea Van trailer is, actually has simply what in the industry is called a bogie or a chassis, which is nothing more than the same thing that you would find on an ordinary trailer, except that it can easily be detached and placed back on so you couldn't call it a flat bed truck or something like that.

Q. O.K. Now what is the time interval between the time that it comes in at the port in New York and until it is placed on this truck, or this bed so to speak, with, uh—you know with the, uh —what they call usually a cab. I guess that was transported here, what is the time interval normally between the time it comes in until the time it would be sent to your warehouse here in Gwinnett County? A. Well, sir, to begin with, uh—I can not

remember in the history of our Gwinnett County operation of having received, uh—Sea Van trailers to the port of New York as such.

Q. Well, just using that as a illustration, say some other port, what other, what other port do they normally come in? **[Tr. 30]** A. Uh—our major, a major amount are coming to the ports of Savannah.

Q. Well, just illustrate how they come in through Savannah, and what the normal procedure is in time element as far as your operation is concerned. A. Alright, sir. They are unloaded from the ship usually, uh—within a day or two determining on how rapidly the customs officials are able to clear the shipment, uh—and normally this will, should take place within two to three days and then determining on the size of the shipment, the number of trailers involved in it, uh—they should all arrive at our warehouse within seven to eight days from the time the ships arrives at port.

Q. O.K. What disposition is made once they clear custom down there before you pick them up? What disposition is made of these vans, uh awaiting your picking them up and bringing them to your warehouse? A. If I understand the question, you're asking where are they stored?

Q. That's correct. A. Of course this is up to the steam ship company, uh—this is their problem until our, we assign a truck line to pick them up.

Q. Do you send the truck line down yourself to pick them up? A. Uh—We don't send it down. Yes, we acquire a truck line to haul, transport the trailer from the port to the warehouse.

Q. Where do they pick them up at the port? A. Uh—They pick them up in the container yards, so they're called.

[Tr. 31] Q. O.K. Are these owned by import companies, these container yards? Is that one of the services you get from the importer, that he does have the yards, or is it there at the cus-

toms? Is this on government property or is this an importer's property? Where they are picked up? A. This is the property of the steam ship line.

Q. The containers are still on the property of the steamship line when they are picked up. A. Yes.

Q. O.K. So they are brought then directly to your warehouse, or is there anywhere in transit that they stop off before they reach your warehouse? A. Well, the, uh—the carrier picks up the trailers and he, uh—would bring them certainly into his, his yard in, in Atlanta.

Q. Who is the carrier of this yard that was used? A. Uh—it could be any number of carriers as such. We use various carriers in transporting of all of our merchandise. Uh—all carriers have a, a yard in dock, in self-docking facility, uh—within a called terminals, within a greater Atlanta area and they would call those in and then they would dispatch them out to our warehouse from that point.

Q. O.K. How many warehouses then are they? Are they sealed at that point, when they are brought out to your warehouse? A. Yes.

Q. And y'all open the van and take the tires out? A. Yes.

[Tr. 32] Q. O.K. Now what do you do with the tires once you've opened the sealed van there at the dock at your warehouse? What disposition is made of the tires at that point? A. The tires are unloaded on to pallets by size.

Q. Now these wooden, when you talking about pallets, you're talking about wooden pallets? A. Yes.

Mr. Stark: O.K.

A. ——and, uh—then are stacked by size, they are segregated by size within the warehouse.

Q. Are they bound to these pallets? A. No, sir.

Q. You just separate different sizes by wooden pallets, is that your method of separating them, or now when you say a wooden pallet, I don't quite visualize what you're talking about. I visualize a wooden pallet as a, uh—wooden platform type thing that gives you material to store it on. But are the tires bound to that pallet in any way, or, are they just loosely stacked on a wooden pallet? A. They are loosely stacked on a wooden pallet.

Q. And then the pallet is picked up and transported into your warehouse? A. Yes.

Q. O.K. And is this, do you have shelving there also like in the normal tire, uh, uh—store or the tire distribution, distribution center where you have them stacked on shelves according to size also? A. Well, I, I don't know whether it would be considered **[Tr. 33]** a normal tire store, uh—may I just describe the——

Mr. Stark: Yea, well you just describe how you store them there in your warehouse and that might be a better question.

A. ——alright, they are stacked, truck tires are stacked four stacks of, uh—five tires each on each large pallet and then a heavy cardboard comb is placed down through the center and another pallet of those tires are placed on that one, three high.

Q. Do you have any shelving there, though you can take individual tires and put them in racks so to speak, uh stack them that way, uh—not on top of each other, but stack them side by side—side by side stacking? A. No, sir.

Q. O.K. Uh—Now as to the tires that come in do they come in with the tires, I mean with the tubes, do they come in with the tires or, are they usually separate vans or how do they come in? Uh, uh—when and how do you receive them? A. They can come in, either with the tires or a full trailer, uh—load of tubes.

Q. Alright, now where are these tubes manufactured? A. They are all imported.

Q. Are they manufactured at the same places as the tires, in Nova Scotia and France? A. Uh—I would assume so, yes.

Q. Well are any of them manufactured within this country? A. No, sir.

Q. Do, are any of the Michelin tires manufactured at this time within the country, or tubes? A. No, sir.

Q. Uh—is there any plants underway or factories underway **[Tr. 34]** that manufacture Michelin tires at this time? A. Yes, sir.

Q. Where will that be located? A. Uh—Greenville, South Carolina.

Q. But you're not receiving at this time any tires from that particular plant, is that correct? A. This is correct.

Q. So none of the tires that you had during the period of the subject of controversy were tires from, uh—domestic productions? A. That is correct.

Q. Alright, the tubes come in, in cartons and I believe you testified that they were in individual little boxes, within, in a larger carton? A. Yes.

Q. And the domestic tubes, uh—that you had in storage, were also in large cartons. Is that correct? A. They were in corrugated shipping cartons.

Q. Yes, how big of a carton would you state that they are in, approximately? A. Those as I remember them to be were in, uh—corrugated cartons measuring approximately 15 by 16 by 16.

Q. Is that inches you are talking about? A. Yes, sir.

Q. O.K. And how about the Michelin cartons that the tubes are in, what were their size? A. The normal Michelin shipping carton is approximately 16 by 18, I'm sorry, 16 by 20 by 24 inches.

Q. And how many, uh—on these dates I believe you gave us awhile ago the amount of, uh—imports that you, or **[Tr. 35]** domestic tires that you had on January 1, '72 and January 1, 73. How much, uh—imported tires did you have on that date? Do you know approximately the value of the imported tires that you had on hand at that time? A. No time I, did I ever have any imported tires.

Q. I mean, I'm sorry, imported tubes let me relate the tubes in. O.K. you testified that you had 10,000 dollars worth of domestic tubes in 1972 roughly 6000, 1973. What was the value on January 1st, 72 of your imported tubes? A. I, I would have to research that I wouldn't have any idea.

Mr. May: May I point out, your Honor, that the returns attached to the complaint as Exhibits and which are admitted show the value of the total value of the inventory claimed to be exempt, uh—Homer, uh there?

Mr. Stark: Well, the only thing there could be some question of intermingling of tires that might subject the tires, uh—I mean tubes that might subject this to tax. That's the only thing I was trying to get for the record so we would have a clear meaning of what, uh—what tubes, uh, if they're considered intermingling there. But he didn't, you don't have that information as to the value of the, uh—tubes imported as of February 1st, 72, uh—or January 1st, 73?

Witness: Now . . .

Q. O.K. Now when the, when the products come in from Nova Scotia, are they shipped in and enter at Savannah, or do they come by truck from Nova Scotia? A. Uh, I would judge that 75% of the, the, uh—tires that **[Tr. 36]** come in from Nova Scotia, come in by ordinary trailer, uh, through the Portland, Maine customs, uh—port. They're brought down by land, uh—a carrier. The other portions can be placed on a, on a, uh—Sea Van ship at the Lahar, I'm sorry, at Halifax and

would be transported by water down to the port of Charlestown, Savannah, or Jacksonville, and dispersed there.

Q. O.K. The ones coming in, uh—in Maine, uh—how is the import handled on that? Is the duty paid on it as an imported item at port of entry there in Maine? A. Yes.

Q. O.K. Do you have a firm there also handling the import and filing the documents for you necessary to get it imported into the county? A. Yes.

Q. Is this, what is the company there that handles it where its coming into the state of Maine. A. I, I do not have the knowledge, our main forwarding agent and, uh—that, that is the term that is used with this company is Intermaritime Forwarding Agent out of New York City, now who they are using up there I would have to check.

Q. Well, are they, they handling, also the, the importing through the state of Maine then? A. When the port of entry, yes, sir, I mean the, uh place of entry is at that place.

Q. O.K. Now, uh—are all of your tires and tubes then handled in the, a similar manner throughout your warehouse, I assume. Is that correct, as far as **[Tr. 37]** your stacking procedure that you have just related to me, uh—as to how they are stacked in the warehouse on these pallets and the tire, tubes are in boxes. Is that correct?

Witness: Throughout my warehouse?

Mr. Stark: Yes.

A. Yes, that is correct.

Q. Now who owns the, the property on which this warehouse is located? A. Uh, Michelin.

Q. Michelin actually owns the real estate? A. Yes, sir.

Q. Is that, uh, the same as the Plaintiff in this action, or is it owned by another corporation? A. Uh—there again I don't have knowledge of this.

Q. O.K. Who has the overall supervision of the warehouse? Is this your responsibility? A. Yes.

Q. O.K. Would you state your method of handling these tires once they reach the warehouse? How do you, uh—handle the distribution of the tires out of the warehouse at that point? I believe you testified that there were franchise dealers that you,—uh—did business with. What is your method of business with these franchise dealers? A. As, uh—their requirements are sent to us, we in turn prepare the orders for shipment and then call in various methods of transportation and have them transported to them.

Q. Alright. Well, just say for illustrations you have a **[Tr. 38]** dealer in Lawrenceville, or a Jack Smith Radial Michelin Tires, if he wanted X number of tires at a certain size what would be his method of getting these tires from your warehouse? A. Well, it would be either by, uh—common carrier or UPS or he could come in on a customer pick-up basis, and pick them up.

Q. In other words, if he called in and he needed four tires of a certain size he could send his truck down to your warehouse and you would then pull out these individual tires that he is asking for and load 'em on his truck. Is that correct? A. Yes.

Q. So when you got them stacked in pallets you don't sell the whole pallet of tires, you, pull out tires as, uh—a retailer might ask for a certain number of a certain size? A. Yes.

Q. Are you paid then or do you bill your, uh—franchise agent or what is your method of payment at that time? Do you just bill them as a franchise agent for these tires and then he pays you based on billing? A. Yes.

Q. How many franchise dealers do you have in the area? A. In our servicing area we would have approximately 250, 300 dealers at the present time being served by the Gwinnett County facility.

Q. And then you have a similar facility in Clayton County is that correct? A. Uh—

[Tr. 39] Mr. Stark: . . . south of Atlanta? A. We have a public, we are using a public warehouse in Clayton County.

Q. Is that under your operation or is that a, uh—separate operation? A. This would be under my jurisdiction.

Q. So some of your tires are stored here and then some of them are stored in this particular warehouse? A. Yes.

Q. Are they distributed out of the other warehouse on the same basis as you described as far as distribution in the Gwinnett County warehouse? A. Uh—yes.

Q. Do you have any domestic tires over there in that particular warehouse in Clayton County, tires manufactured within the United States or, are all of them imported? A. Uh—we have no American manufacturing on Michelin tires. All Michelin at this point are imported.

Q. Well, do you sell other tires, other brands other than Michelin? Do you have any that carry any other names other than Michelin, or, all that are manufactured within this country, country? A. No, sir.

Q. You don't carry any, uh—American brand tires at all? A. No, sir.

Q. Alright, now when the trucks come in, uh—from Canada we go to Maine, at which point they enter the United States. Uh—are these trucks also sealed at the plant up in, uh—Nova Scotia? A. Yes.

[Tr. 40] Q. O.K. Are they then brought directly from Maine directly to your warehouse or do they go to some distribution

point before they are sent to your warehouse? A. They go directly to our warehouse.

Q. So they are driven directly from Maine, directly to your warehouse here in Gwinnett County? A. Yes.

Q. They don't stop along the way, or they are not stored—uh—in transit or is this the normal procedure? A. Well, sir—uh—I can best answer that by saying that we certainly don't want them to stop along the way, but we don't have control over a common carrier, if he's going to stop along the way overnight or something. Uh—we can't judge that, but there is no intransit point where they come to rest with out knowledge. Uh—once that starts making movement from the factory, as far as we are concerned, it is to be a continual flow into our warehouse.

Q. O.K. Now do you have any warehouse? Do you have a warehouse in Savannah? Does Michelin lease or own a warehouse in Savannah. A. No, sir.

Mr. May: Just one or two questions redirect the example that Mr. Stark used about the local dealer here in Lawrenceville coming down and picking up the four tires. Is that a normal occurrence, or are your distributions made in bigger quantities than four tires at a time?

Witness: Yes, sir. They are made in much larger quantities than **[Tr. 41]** that—uh—most normally.

Mr. May: In just, in round figures what is your normal distribution to a franchise dealer? Does he order 50 tires at one time or a 100, or is there any average, there may not be?

Witness: You can strike an average. You would find that probably the average shipment is,—uh—45,000 lbs. in tires would be the average.

Mr. May: Now, Mr. Stone, could I, could I, or could Judge Pittard, or Mr. Stark or any of us drive down to your facility in

Gwinnett County and buy a set of tires to go on our automobile?

Witness: No, sir.

Mr. May: You distribute only to franchise dealers, is that correct?

Witness: That is correct.

Mr. May: And you said there were between 250 and 300 of those in the six southeastern states?

Witness: Yes.

Mr. May: And normally in quantities of 5000 lbs. or, or more?

Witness: Yes.

The Court: How many tires would be on one of these containers? How many thousand lbs. of tires was, would be on Sea Van trailers?

Witness: They would average 23 to 25 thousand lbs., your Honor.

The Court: You don't make distributions in the same amount of tires, the same volume of tires that come in on a sea trailer? You do make distributions of less tires than you receive on a Sea Van?

Witness: Uh—yes, your Honor.

Mr. May: I just want to make sure we cleared, I think you **[Tr. 42]** answered a question awhile ago and it may have been a slip of the tongue, maybe you and Mr. Stark both. If I recall correctly you said that you had no imported tires, I think you meant to say you had no domestic tires, am I correct? If you, if in fact the record shows that you said that, that was a slip of the tongue, was it not?

Witness: Yes, yes.

Mr. May: Is, I know I'm leading on one——

Mr. Stark: ——that's alright, that is alright if he made a mistake there. I'll try to get that.

Mr. May: ——I just wanted to be sure of that.

Witness: Yes.

Mr. May: Am I correct, this is to clear it up one more time, that the only tires located in Gwinnett County warehouse are imported tires?

Witness: That is correct.

Mr. May: Now one other point, I just wanted, you answered the question to Mr. Stark that you didn't have these tires in what I took you to mean an overhead rack type of arrangement where they are stacked up one, one by one. Was that your interpretation of the question he was asking you?

Witness: Uh—my interpretation of the question that was asked by Mr. Stark was that in retail stores you commonly see tires laying side by side upright as opposed to laying flat on top of the other and I answered it that no, we do not store tires on their tread surface. They are all stacked flat.

Mr. May: That's the imported tires.

[Tr. 43] Witness: Uh—yes, that is the only tire we have.

Mr. May: That's all I have, your Honor.

Mr. Stark: Uh—Mr. Stone, one little point here I failed to ask—uh—of course you said yourself that through your franchise dealers now normally in franchise agreement they have a certain requirement that only they, the licensed franchisers will sell or retail the product. But most of the franchise agreements also provide that on volume sales that you have a right to sell direct to certain type customers or you either reserve certain customers that are not allowed to be sold through the franchise. Do you have certain customers that buy directly from your—uh—

Michelin Tire Corp. operation here in Gwinnett County that have a large volume of tires, say a big user of consumer tires? Do you have any such customers?

Witness: I know of none. I know of no such dealer, all tires that are shipped to the best of my knowledge would go to the franchise dealer.

Mr. Stark: So you don't have any major, in other words, if a major customer come to you to buy tires and said I want 5000 tires of a certain type, you would not be able to sell it by a virtue of your franchise agreement, or you could sell it if you so elected?

Witness: I, as my understanding at the sales department, it would be responsible for this, would have to take him to one of our franchise dealers.

Mr. Stark: Now when the tires come in, are these various lots from the—uh—from either Nova Scotia or France? Are they separated by size? Is that the only way you go **[Tr. 44]** about separating them to put them on these pallets, certain types of the size tires?

Witness: By size and style.

Mr. Stark: O.K. Well, are the tires that are manufactured in Nova Scotia, the same as the tires that are manufactured in France as far as size and shape and confirmation of the particular tire?

Witness: Were we to receive what we could classify as a 10-hundred twenty truck tire from Canada and were we to receive the same tire from a French factory, the only difference in the two would be that one would say made in Canada and the other would say made in France. They would not be distinguishable any other way.

Mr. Stark: So they are not when they come in you don't separate them as to where they are, were manufactured, or do

you separate them basically on the size and the type of the tire? Is that correct?

Witness: That's correct.

Mr. Stark: So they're not in identifiable lots as far as where they are manufactured from, but just as to the general nature and size?

Witness: Correct:

Mr. Stark: We have nothing further, your Honor.

The Court: Why don't we take about half a hour and have some lunch,—uh—and I don't know how much other evidence we have. Do you know?

Mr. May: This completes our case, your Honor. We don't have——

Mr. Stark: ——We have just one witness, your Honor, that —uh—basically is to introduce—uh—the records—uh—of—uh——

The Court: Let me hear your witness then, Mr. Stark, and then we'll **[Tr. 45]** I have—uh—got another hearing a coming this afternoon and I got to leave to go somewhere I can't find any——

Mr. Stark: We may be able to stipulate, we have the originals of these documents. The main thing we just wanted, I believe he has copies and his complaint—uh—but it may be that a number of this—uh, uh—72. Where is your 72? Mr. Wilson?

Mr. Wilson: There they are.

Mr. Stark: Would you raise your right hand please and swear the testimony you are about to give in the present hearing to be the truth, whole truth and nothing but the truth, so help you God?

Witness: I do.

Mr. Stark: Have a seat, please.

ROBERT L. WILSON

Q. Would you state your full name and address and what your present occupation is? A. O.K. My name is Robert L. Wilson and I live at 2781 Hickory Trail in Snellville and I am the administrator of the Tax Assessors office.

Mr. Stark: O.K. Your Honor, we would like to tend into evidence the 1972 tax return and the 1973 tax return of Michelin Tire Corp.—uh—which I believe there's been no objections by the Counsel of the Plaintiff.

The Court: They've already been attached to that.

Mr. May: They're attached to the complaint and, and admitted, I believe.

Mr. Stark: Oh, O.K.

Mr. May: And we have no objection to the originals being admitted if they're, but they're already——

[Tr. 46] Mr. Stark: ——already attached——

Mr. May: ——in the record.

Mr. Stark: O.K. If they be in the record, your Honor, then we—uh—we'll go ahead, we'll go ahead and put them in as the original documents.

Q. Uh—would you state to the court just how the situation came about resulting in, the—uh—NOD returns on Michelin Tire Corp. for these two years, if you would try to? A. I have, I have of course been employed by Michelin, Michelin, by Gwinnett County for just a little over a year and whenever I come on the scene as I was going through the records to see what did exist, one I know that came to my attention that we had a corporation here listed quite a large amount of inventory, but then saying that it was not taxable and the county was not taxing. So I proceeded to try to find out why it wasn't taxed and I could never come up with anything concrete to—uh—

clear my mind and it is our duty to tax everybody fairly. I contacted Michelin that—uh—I did not quite understand this, I would like to talk with them and as this went along we did enter in the NOD's, which would in effect issue a tax bill for them for this inventory that they claimed was exempt.

Q. Now was there any change actually made in the tax return for 1972 or 1973? A. There were no changes made—uh—we issued—uh—in effect an extra tax bill.

Q. Uh—was this based on the fact that you disallowed the **[Tr. 47]** the exemption that they had claimed? A. Uh—yes, this would be it, we would be saying that they were taxable for it.

Q. Well, did you change any of the figures of the amount of their return actually the figures reflected on the return with this increase or decrease? A. We used exactly the—uh—same figures—uh—possible rounding off to the nearest zero.

Q. But the tax office did disallow their claimed exemption which resulted in an increase in tax for Michelin Tire Corp. and then this was then—uh—issued in the form of NOD, or not on Digest Tax Bills which are a part of the record? A. This is right, this whenever I, I contacted them—uh—whenever I, I believe I mis—, got Mr. Cain first. I wrote to a gentleman in New York by the name of Sobenie and he contacted me and said who the representatives here would be. I met with them,—uh—I told them what—uh—we were going to do and—uh—here we are.

Q. O.K. Uh—did you visit the—uh, uh—warehouse of Michelin Tire here in Gwinnett County? A. Uh—yes, sir. Shortly the letters were—uh—written I could be mistaken here, we might have gone to the warehouse first, but I remember it, we wrote the letter then went to the warehouse and talked to them.

Q. When you went to the warehouse did you examine the storeroom of goods there in the warehouse? A. We walked

through the warehouse, yes to examine the tubes and tires and that sort of thing. Walked among them.

[Tr. 48] Q. Were there any of them in cartons or boxes—uh—at that time when you went through the warehouse? A. No, the tires have always been stacked on the wooden pallets.

Q. In individual piles? A. Yes, several tires to each pile.

Q. O.K. And did you observe the tubes also? A. Uh—yes in fact as you come out of the warehouse, or come out of the office area into the warehouse there are in a sense almost directly in front of you.

Q. O.K. Were the arrangements in the warehouse basically or substantially the way Mr. Stone testified, as how they were arranged with, in the warehouse and their distribution throughout the warehouse? A. Yes. I've no fault with him.

Q. Is there any other thing that you think as far as the records is concerned that you observed, or in the warehouse that would be appropriate to put in the record? A. Uh—nothing much more that hasn't already been said, except you can see the tires there. Uh—you know that they are Michelin Tires. You do not know—uh—what van they came out of, or anything like this. You could not say they came in on a certain day, at least I couldn't, in a certain truck or Sea pack, whatever.

Mr. Stark: O.K. No further questions.

Mr. May: We have no questions.

The Court: Anything further?

Mr. Stark: Nothing further, your Honor.

Mr. May: We close your Honor.

Mr. Stark: We close, your Honor.

[Tr. 49] The Court: Do you wish to argue the matter? He has . . .

Mr. Stark: He has the brief, your Honor.

The Court . . . to give you a course of opportunity to reply by brief if you would like.

Mr. Stark: If we could, your Honor, it's a little technical. The trouble is there . . .

The Court: Do you want to supplement your brief from any thing that come out in the record today, Mr. May? I'll be glad for you to do it, sir.

Mr. Stark: If we would go ahead and transcribe the records and give me just a few days. I'll just transcribe the only item I've got here as this—is still a little research on it due to the fact that we don't have—uh you're dealing with foreign jurisdiction here and trying to get a little information on it, uh—if they would go ahead and prepare a record, then give me just a few days thereafter, I'll be glad to file a brief so it can be——

The Court: Suppose you get your record out, Mr. Upton, and at your convenience I know it'll be as soon as you can.

Reporter: Yes, sir.

The Court: And—uh—I'll assume each side wants a copy, wants a copy of the record.

Mr. Stark: Yes, sir, your Honor. I would like to have a copy of the record.

Mr. May: Yes, sir.

The Court: Upon the receipt of the record gentlemen, suppose we say 10 or 15, 30 days, whatever.

Mr. Stark: 15 should be sufficient, your Honor.

The Court: 15 days after the record is completed.

Mr. Stark: He already has a brief filed, so really I'll just be a reply to his and based on what we have in the record **[Tr. 50]** today. We didn't have all the——

The Court: Alright, suppose after the record received, Mr. Stark. You take 15 days to make whatever brief you want to, serve Mr. May with a copy of it and if you want a reply you better have it in 10 to 15 days, of . . .

Mr. May: . . . 10 will be plenty, your Honor.

The Court: 10 days, alright.

Mr. May: After receiving his——

The Court: Yes, sir. Let's sort of proceed in that order then.

Mr. May: Alright, sir. Thank you, your Honor.

(This concludes this hearing.)

[Tr. 51] In the Superior Court of Gwinnett County
State of Georgia

(Title Omitted in Printing)

EXHIBIT P-1

AFFIDAVIT OF ROLAND A. LACROIX

State of New York
County of

Personally appeared before the undersigned officer Roland A. Lacroix who, after first being duly sworn, deposes and says on oath as follows:

1

This Affidavit is made to be submitted to the Superior Court of Gwinnett County, Georgia, as evidence on behalf of the plaintiff in the above-styled action, and all facts herein stated are within the personal knowledge of the affiant.

2

At all times material herein, affiant has been and is now the Administrative Manager of Michelin Tire Corporation and as such, has personal knowledge of the facts hereinafter stated.

3

Michelin Tire Corporation is a corporation organized and existing under the laws of the State of New York with its principal place of business in Lake Success, New York, and is authorized to and transacting business in Gwinnett County, Georgia, at 2169 Interstate 85, Norcross, Georgia.

4

Michelin Tire Corporation is engaged in the business of importing into the United States automobile and truck tires and tubes manufactured outside the United States and distribut- **[Tr. 52]** ing such tires and tubes through franchised tire dealers. As a part of such business, Michelin operates a distribution warehouse located in Gwinnett County, Georgia, and all tires and tubes which flow into such warehouse are imported by Michelin from the factories outside the United States in which such tires and tubes are manufactured, and subsequently flow out from the Gwinnett County warehouse to destinations scattered throughout six (6) southeastern states.

5

Michelin is required to pay to the United States of America a four per cent (4%) import duty on all of the tires and tubes which it imports from factories outside the United States, and said four per cent (4%) import duty was paid by Michelin on all of the imported tires and tubes located in the Gwinnett County warehouse on January 1, 1972 and January 1, 1973.

6

Approximately seventy-five per cent (75%) of the imported tires and tubes located in the Gwinnett County warehouse on January 1, 1972 and January 1, 1973 were transported from the factories outside the United States at which the same were manufactured to the Gwinnett County warehouse in vehicles commonly referred to as "seavan trailers," and the remaining twenty-five per cent (25%) were transported in over-the-road trailers.

7

Michelin Tire Corporation does not own or lease any of the "seavan trailers" or any of the over-the-road trailers in which said imported tires and tubes are transported, and all of such trailers are owned by the shipping companies who transport the imported tires and tubes.

8

As of January 1, 1972 and January 1, 1973, respectively, none of the imported tires and tubes located in the Gwinnett County warehouse were pledged or hypothecated by Michelin as security for any loan.

[Tr. 53] 9

Michelin Tire Corporation did not receive any notice of any correction or change made by the Tax Assessors of Gwinnett County, Georgia, in the 1972 personal property tax return filed by Michelin and did not know that its return had been changed by the Assessors until it received 1972 Gwinnett County Tax Bill No. 24559 from the Tax Commissioner of Gwinnett County, Georgia.

10

Michelin Tire Corporation did not receive any notice of any correction or change made by the Tax Assessors of Gwinnett County, Georgia, in the 1973 personal property tax return filed by Michelin and had no knowledge that any correction or change in its 1973 return was being considered by the Tax Assessors of Gwinnett County, Georgia, until it received a letter dated August 24, 1973 from Mr. Robert L. Wilson, Administrator of the Board of Tax Assessors of Gwinnett County, Georgia, requesting a meeting with representatives of Michelin for the purpose of discussing the validity of the inventory exemption claimed by Michelin in its 1973 return.

11

The NOD returns attached to the plaintiff's Complaint as Exhibits H and I, respectively, were filed by Mr. Robert L. Wilson, Administrator of the Board of Tax Assessors of Gwinnett County, Georgia, without the knowledge or consent of Michelin Tire Corporation, and Michelin has at no time authorized or ratified the filing of either of said return.

12

As of January 1, 1972, passenger tubes which had been removed from the original cartons and having a value of $633.92

were owned by Michelin Tire Corporation and located in its warehouse in Gwinnett County, Georgia. On January 1, 1973, passenger tubes which had been removed from the original cartons and having a value of $664.22 were owned by Michelin Tire Corporation and **[Tr. 54]** located in its warehouse in Gwinnett County, Georgia.

This 20th day of March, 1974.

/s/ ROLAND A. LACROIX

Sworn to and subscribed before me this 29th day of March, 1974.

/s/ ELLEN SUE BORAKOVE
Notary Public
New York
(Notarial Seal)

(Exhibits P-2, P-3, P-4, D-1, and court reporter's certificate omitted in printing.)

The opinion and judgment of the Superior Court of Gwinnett County, Georgia, are printed at pages A-1 through A-5 of the Appendix to Michelin's Petition for a Writ of Certiorari herein.

The opinion and judgment of the Supreme Court of Georgia, and that Court's order denying rehearing, are printed at pages A-6 through A-19 of the Appendix to Michelin's Petition for a Writ of Certiorari herein.